

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE)
CONDITIONAL USE PERMIT GRANTED)
BY THE CITY OF HOQUIAM TO THE)
CITY OF HOQUIAM AND A)
SHORELINE CONDITIONAL USE PERMIT)
GRANTED BY THE CITY OF HOQUIAM)
TO ALAN SPRINGER,)
JANET L. ANTHONY and FRIENDS)
OF BOWERMAN BASIN,)
Appellants,)
v.)
CITY OF HOQUIAM, STATE OF)
WASHINGTON, DEPARTMENT OF)
ECOLOGY, and ALAN SPRINGER,)
Respondents.)

SHB Nos. 84-52 and 84-61
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the requests for review of two shoreline management substantial development conditional use permits for the filling and development of a 21-acre site adjacent to Bowerman Basin in the City of Hoquiam, came on for hearing before the Shorelines Hearings Board; Lawrence J. Faulk, Rodney M. Kerslake, Nancy R. Burnett, Beryl

1 Robison, and Gayle Rothrock (presiding) on January 16, 17, and 18,
2 1985, at Hoquiam, Washington. The proceedings were officially
3 reported by Kim L. Otis, Bibi Carter, and Lisa Flechtner of Barker and
4 Associates.

5 Appellant Janet L. Anthony represented herself and Friends of
6 Bowerman Basin. Respondent City of Hoquiam was represented by Jon
7 Parker, City Attorney. Respondent permittee Alan Springer represented
8 himself and respondent state agency was represented by Jay J. Manning,
9 Assistant Attorney General.

10 From the testimony offered, the exhibits admitted and examined,
11 and the arguments heard and read, the Board makes these

12 FINDINGS OF FACT

13 I

14 The parcel of property which is the subject of this appeal is 21
15 acres of upland wetlands and wooded flats on the edge of Bowerman
16 Basin which is diked on the northern and western side, approximately
17 ten feet high, and bordered by roads on the east and south. It is
18 owned by the City of Hoquiam and is proposed as an area to receive
19 150,000 cubic yards of fill to elevate it as much as seven to eight
20 feet and level it. A diked perimeter would still exist. The City
21 plans to segment it for industrial development including sites for log
22 and equipment storage, machine repair, and a midget car test track.
23 The site is designated as Urban Environment in the Hoquiam Shoreline
24 Master Program (HSMP) and is a shoreline of the state.

25 Between 1973 and 1976 the subject area and 100 additional

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1 surrounding acres were filled under seven separate shoreline
2 substantial development permits creating land which has become basin
3 tide flats, marginal or buffer land and land dedicated to industrial
4 uses and roads.

5 II

6 Until recently the City and the State treated the site as if it
7 were fully within shoreline jurisdiction because part of it is within
8 200 feet of the ordinary high water mark (OHWM). That OHWM shows
9 evidence of its presence on an adjacent 42-acre parcel which has
10 characteristics of a true salt marsh and evidence of tidal action such
11 as drift logs, mats of detritus, and flotsom floated up by the tide.
12 Some fresh water species appear sparsely near the toe of the dike
13 indicating a transition zone. Sharp changes in vegetation occur at
14 the dike as upland plant communities appear. The toe of the dike is
15 the place where the tidewater has left its uppermost distinguishable
16 mark.

17 III

18 Bowerman Basin is a unique wildlife ecosystem; a mosaic of
19 tideland, marsh and waters precious to migratory birds in the Pacific
20 Flyway, and to bird watchers. Statewide and national interest has
21 focused on the basin annually when the spring migration of
22 shorebirds--and raptors, their natural predators--commences in April.
23 Documentation shows a genuine variety of birds--western sandpipers,
24 dunelins, dowitchers, plovers, hawks, falcons, and eagles, among
25 others--active in the basin during migration. Numerous small mammal

1 species also populate the area.

2 Committed to protecting and preserving the basin, advocates for
3 both the area and the birds have persuaded public officials to reflect
4 in the HSMP and the Draft Grays Harbor Estuary Management Plan (GHEMP)
5 environmental designations which deter development there and which
6 contravene expansion of adjacent environmentally incompatible uses.

7 IV

8 The filled tidelands, which become border lands to Bowerman Basin,
9 act as a viewing area to wildlife activity in the basin proper. Some
10 number of county residents and visitors stroll and birdwatch on the
11 diked area of the subject 21-acre site in enjoying aesthetic values of
12 that particular shoreline of statewide significance. Such activity is
13 a usual kind of public access to shorelines in this state and not
14 untypical for this area. It is an especially convenient and safe
15 access to the basin shoreline during the annual April-May bird
16 migration.

17 V

18 Grays Harbor County and the City of Hoquiam are concerned about
19 economic development and diversification for future prosperity.
20 Articulated growth plans and ordinances for the harbor area suggest
21 the desirability of tourism development, information and service
22 businesses, light manufacturing, and outgrowth industries of basic
23 timber, fishing, and shipping. The draft GHEMP projects that the
24 subject 21-acre shoreline jurisdiction site can be dedicated to
25 commercial/industrial uses with certain other undeveloped, relatively

undegraded lands being placed under protective preserve under the management of the Washington State Game Department (WDOG). It is asserted the GHEMP is up to six months away from final approval. However, no significant proposed changes are known which would affect the use designations found in the final draft. We find the draft GHEMP is a reasonable indicator document upon which persons may logically rely for guidance in development planning to complement local approved land use and shoreline ordinances.

VI

In addition to GHEMP, the Hoquiam zoning code, the Grays Harbor Overall Economic Development Plan, the HSMP urban environment uses and regulations on conditional uses and the policies of the SMA on disturbed shorelines, as applied to the Grays Harbor estuarine area, contemplate commercial/industrial uses within the 21-acre site.

VII

A dispute over the characterization of the subject site exists amongst state and federal environmental regulatory and management agencies. Notable are differing viewpoints of the Army Corps of Engineers and the WDOG and WDOE. Under the Shoreline Management Act of Washington State (SMA) and the HSMP and under the facts of the case as presented, the site is an uplands-type associated freshwater wetland, that part of which is 200 feet back from the OHWM being correctly classified as shorelines of the state located adjacent to a shoreline of statewide significance.

VIII

On May 2, 1984, the City of Hoquiam's Public Works Department made application to the City for a substantial development permit and shoreline conditional use permit (CUP #86) for placement of up to 150,000 cubic yards of earth fill upon the subject site, which is located at the northwest corner of Airport Way and Paulson Road in Section 10, Township 17 North, Range 10 West, W.M. The application stated the fill material used would be capable of forming a stable base for future development and that the material and its placement would be accomplished such that no pollution to surface or ground waters would occur. The proposed activity was determined not to need an EIS.

Reviewing the proposal favorably in light of the HSMP and the draft GHEMP the City endorsed the application request on August 13, 1984, and sent it to WDOE for approval. The Department approved the permit September 12, 1984, after reviewing the SMA, WAC 173-14-140, and applicable portions of both the HSMP and the draft GHEMP.

IX

On July 20, 1984, Alan Springer of Aberdeen applied for a permit (CUP #90) to establish a woodlot (for firewood) and a facility for servicing and repair of 3/4 midget race cars on 1.8 acres of the 21-acre site near Paulsen Road in the Northwest quarter of Section 10, more than 200 feet away from the OHWM. He applied for a shoreline substantial development and conditional use permit upon being advised his property was in the shoreline area and subject to conditional use

1 regulation therein. His intentions, like those of several other
2 business people, were to place his business on the newly-filled
3 21-acres sometime in the future. The City favorably reviewed the
4 application in light of the HSMP and the draft GHENP and sent the
5 application to WDOE recommending approval. No EIS was determined to
6 be necessary.

7 WDOE's Shorelands Division reviewed the application after
8 consultation with WDOG, and responded with a conditional approval by
9 letter of October 11, 1984. The letter advised caution on proceeding
10 with development and a reminder that other permits/approvals would be
11 required and set forth two conditions, as noted here:

- 12 1) The project proponent shall agree not to use the
13 outdoor test track during the period of April 15
14 to May 15 of each year (the shorebird migration
15 period).
- 16 2) The project proponent will re-establish a buffer
17 strip of vegetation along the entire northern and
18 western boundaries of the project property. This
19 strip shall consist of trees and shrubs. Native
20 species such as alder and willow are recommended
21 since they grow rapidly and many propagate
22 naturally. The buffer strip shall be of
23 sufficient width (minimum of 5 feet) to provide
24 for noise abatement on a year round basis.

25 Testimony and exhibits revealed that WDOE reviewed the project
26 proposal in light of the SMA, the HSMP, the state's conditional use
27 criteria (WAC 173-14-140), and the draft GHENP and found it to be
technically in keeping with the applicable criteria. The state was
made aware that the proposed activity would be built on disturbed
land; i.e., on fill coming from a nearby highway industrial route
by-pass project, which, in turn, rested on dredge spoils deposited on

1 the site under permits from a decade ago.

2 X

3 Feeling aggrieved by these two approvals, Janet L. Anthony and
4 Friends of Bowerman Basin requested review of the WDOE and City of
5 Hoquiam decisions October 12 and November 13, 1984. A pre-hearing
6 conference on the matters, consolidated for hearing, was held
7 November 27, 1984, and a Pre-Hearing Order identifying issues and
8 guiding the parties' actions at hearing was issued December 19, 1984.

9 XI

10 Any Conclusion of Law which is deemed a Finding of Fact is hereby
11 adopted as such.

12 From these Findings of Fact, the Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 The Board has jurisdiction over these persons and these matters.
16 Chapters 43.21B and 90.58 RCW.

17 In these requests for review of the issuance of underlying
18 shoreline substantial development permits, the appellant has the
19 burden of proving that issuance of the permits was inconsistent with
20 the Shoreline Management Act (SMA), the HSMP, and SEPA. Chapter 90.58
21 RCW and WAC 461-08-175(a) and (c). Additionally, with shoreline
22 conditional use permits, the appellant must prove that the issuance of
23 such permits is inconsistent with the provisions of WAC 173-14-140.

24 II

25 Accordingly, these proposed developments are here reviewed for
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1 consistency with the HSMP, the SMA, WAC 173-14, and SEPA.

2 After the adoption of an applicable master program and its
3 approval by Department of Ecology (DOE), we do not review a proposed
4 development for consistency with the DOE Guidelines for Development of
5 Master Programs, WAC 173-16. RCW 90.58.140(2)(a) and (b).

6 III

7 Appellants assert that the property in question is located within
8 shorelines of state-wide significance (SSWS) as defined at RCW
9 90.58.030(2)(e)(i). Evidence at hearing clearly established that the
10 subject property is indeed entirely landward of and separated from the
11 line of ordinary high water (OHWM) and, therefore, is not located
12 within shorelines of statewide significance.

13 IV

14 At hearing respondents City of Hoquiam and WDOE questioned whether
15 the proposed Springer development was within shorelines jurisdiction
16 at all. Said issue was not specifically identified in the Pre-Hearing
17 Order and was not timely raised nor properly explored and argued in
18 the hearing and post hearing briefs, and the Board, therefore,
19 declines to rule on this matter.

20 V

21 Under the HSMP at Section 1.060, Table 2, nonwater-related
22 landfills landward of the OHWM are a conditional use. The City of
23 Hoquiam recognized this and properly required its Public Works
24 Director to file for such permit on behalf of the City (the landowner).

25 The master program recognizes that such filling should more

1 readily occur in previously altered or degraded areas. HSMP Section
2 1.070(6) reads:

3 Where property has been previously impacted or
4 disturbed by man, and a part not so disturbed; then,
5 where reasonable, new development shall occur on the
6 previously disturbed section of property.

7 As noted in the Findings, the 21-acre site has previously been diked
8 off and filled.

9 The WDOE properly reviewed the proposed permits under WAC
10 173-14-140. The most important of these criteria here is consistency
11 with the local master program and the SMA. The proposed fill would
12 occur in an area of prior impact now wholly outside of, but adjacent
13 to the ecologically valuable salt marsh system of Bowerman Bay. With
14 a perimeter walkway and buffer area the proposal would not interfere
15 with public use of the shorelines. Rather, it would enhance such
16 public use and access. Development uses proposed for the site are
17 urban/industrial and are compatible with neighboring permitted uses
18 and will cause no unreasonable adverse effects to this Urban
19 Environment shoreline or to the Basin. With use of "clean" fill and
20 the maintenance of public access to the site perimeter the public
21 interest will suffer no substantial detrimental effect.

22 VI

23 Certain policies of the HSMP are clearly applicable to the
24 proposed fill project.

25 Policy 2(a) on Landfills reads, in part:

26 shoreline fills or cuts should be designed and
27 located so that significant damage to existing
ecological values or natural resources...will not
occur....

1 Policy 2(b) on Natural Systems reads, in part:

2 In areas subject to tidal flooding, development
3 should be discouraged in presently undisturbed areas
4 and encouraged...where landfilling and spoiling have
5 altered the environment.

6 Landfills are not in any way prohibited by the HSMP, but they can
7 and should only be authorized after careful scrutiny of the particular
8 situation and must not accumulate, haphazardly, on basin or buffered
9 lands and waters.

10 The HSMP policies and their implementing regulations allow a
11 shoreline landfill in an Urban Environment and the amalgamation of SMA
12 and HSMP policies and regulations allowed the City of Hoquiam and the
13 WDOE to properly conclude that the subject shoreline permits are
14 consistent with such policies and regulations.

15 VII

16 Appellants allege that the City of Hoquiam failed to comply with
17 SEPA both in filling out Environmental Checklists and issuing its
18 Declaration of Non-significance for the City of Hoquiam and Springer
19 proposals. Under the State Supreme Court's rule "to reach a valid
20 negative threshold determination, environmental factors must have been
21 evaluated to such an extent as to constitute prima facie compliance
22 with SEPA procedural requirements." Hayden v. City of Port Townsend,
23 93 Wn. 2d 870, 880, 613, P. 2d 1164 (1980).

24 In reviewing a threshold determination, "the decision of the
25 governmental agency shall be accorded substantial weight." RCW
26 43.21C.090. That decision can be overturned only if it was clearly
27 erroneous. Brown v. City of Tacoma, 30 Wn. App. 762, 764, 637 P. 2d,

1 1005 (1981), quoting Hayden, supra, 93 Wn. 2d at 880. Appellants must
2 show that, in view of the entire record, the Board will be left with a
3 definite and firm conviction that a mistake has been made. Appellants
4 have failed to so persuade the Board.

5 VIII

6 The draft (yet unadopted) GHEMP, which designates the subject site
7 for urban/industrial uses, is a useful advisory document to local and
8 state agencies making decisions relative to the Grays Harbor estuary.
9 The City and DOE did not act improperly in allowing the GHEMP to serve
10 as a reference document when evaluating these shoreline
11 development-conditional use permits and declarations of
12 non-significance under SEPA. Since the GHEMP is not an adopted final
13 document or a part of the HSNP, it is not determinative in the matters
14 before the Board.

15 IX

16 With the imposition of a permit condition requiring a diketop
17 perimeter, public walkway, and buffer area along the waterward borders
18 of the 21-acre fill site which would provide viewing opportunities
19 into Bowerman Basin, the Board concludes that the decisions of the
20 City and WDOE should be affirmed.

21 X

22 Any Finding of Fact which is deemed a Conclusion of Law is hereby
23 adopted as such.

24 From these Conclusions of Law the Board enters this

25
26 FINAL FINDINGS OF FACT,
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ORDER

City of Hoquiam CUP #86 granted by the Washington State Department of Ecology allowing fill to be placed on a 21-acre site is affirmed. The Alan Springer CUP #90 allowing the construction of a woodlot facility, a facility for repairs and service of 3/4 midget race cars and a test track for those cars is affirmed; provided, however, CUP #86 is affirmed with the addition of one condition, in accordance with Finding of Fact IV and Conclusion of Law V:

That the northern and western diked perimeter of the site shall be maintained as a natural walkway for public use and a buffer area shall be developed. Such walkway and area shall be designed and planted both to provide area suitable for public viewing of the entire basin and to screen future industrial/commercial uses established in the site interior.

DONE this 15th day of April, 1985.


SHORELINES HEARINGS BOARD


NANCY R. BURNETT, Member


GAYLE ROTHROCK, Vice Chairman


BERYL ROBISON, Member

 4/15/85
LAWRENCE J. FAULK, Chairman


RODNEY M. KERSLAKE, Member